

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

David McGee,,  
Plaintiff,

v.

File No. 1:10-cv-11-jgm-jmc

Andrew Pallito, in his individual  
and official capacities, Robert Hofmann,  
Kurt Kuehl, Robert McDougall,  
Marie Salem, Robert Kupec,  
Kevin Oddy, Phil Fitzpatrick,  
Brian Reed, Cindy Modiano,  
Mary Ellen Cross, Richard Byrne,  
David Talcott, Greg Hale,  
Tim Harrington, Philip Brochu,  
Phillip Quijano, Joseph Sylvestri,  
Marshall Rich, David Martinson,  
Michael Bellizzi, Scott Morley,  
Anita Carbonell, Ellen McWard,  
Dominic Domato, Mark Potanas,  
Christina Granger, James Kamel,  
Joshua Rutherford, Michael Arace,  
James Edwards, Monique Sullivan,  
Correctional Officer Michael Simonds,  
Correctional Officer Douglas Camp,  
Delores Burroughs-Biron, M.D.,  
Nurse Manager Doe, Nurse(s) Doe,  
and Prison Health Services, Inc.,  
Defendants.

**ORDER**

The Magistrate Judge's Report and Recommendation was filed December 22, 2013. (Doc. 165.) After de novo review and over objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1).

The motion for summary judgment filed by Defendant Prison Health Services Inc. ("PHS") (Doc. 157) is GRANTED with respect to Plaintiff's federal claims. The Court declines to retain supplemental jurisdiction over his state law claims.

The Court, on its own motion, GRANTS dismissal of Plaintiff's federal claims against Nurse Manager Doe and Nurse(s) Doe, and declines to retain supplemental jurisdiction over his state law claims against them.

Plaintiff shall be allowed 30 days to file an Amended Complaint with respect to his claims against PHS, Nurse Manager Doe and Nurse(s) Doe. Failure to file an Amended Complaint by March 5, 2014 will result in the dismissal of all of McGee's claims against PHS and the unnamed nurses.

The State Defendants'<sup>1</sup> Motion to Dismiss (Doc. 161) is GRANTED. All of McGee's claims against the State Defendants are DISMISSED with prejudice.

It is further certified that any appeal taken in forma pauperis from this Order would not be taken in good faith because such an appeal would be frivolous. See 28 U.S.C. § 1915(a)(3).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 3<sup>rd</sup> day of February, 2014.

/s/ J. Garvan Murtha  
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Honorable J. Garvan Murtha  
United States District Judge

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<sup>1</sup> The State Defendants are all of the named Defendants except Nurse Manager Doe, Nurse(s) Doe, and PHS.